

Judge Lasnik

03-CR-00281-MISC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOWARD O. HOWELL,

Defendant.

NO. CR03-0281L

PLEA AGREEMENT

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Susan Loitz, Assistant United States Attorney for said District, and the defendant, Howard O. Howell, and his attorney, Brian Tsuchida, and enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the following charges contained in the Indictment:

a. Mail Fraud, as charged in Count 1, in violation of Title 18, United States Code, Section 1341;

b. Wire Fraud, as charged in Count 6, in violation of Title 18, United States Code, Section 1343; and

c. Obtaining Information on Consumers Under False Pretenses, as charged in Count 12, in violation of Title 15, United States Code, Section 1681q.

1 By entering this plea of guilty, Defendant hereby waives all objections to the form
2 of the charging document.

3 2. Elements of the Offenses.

4 a. Mail Fraud: The elements of the offense of Mail Fraud as charged in
5 Count 1, in violation of Title 18, United States Code, Section 1341, are as follows:

6 First, the Defendant made up or knowingly participated in a scheme to
7 defraud or to obtain money or property from others by means of false pretenses,
8 representations or promises;

9 Second, the Defendant knew that the pretenses, representations, or promises
10 were false;

11 Third, the pretenses, representations or promises were material, that is, they
12 would reasonably influence a person to part with money or property;

13 Fourth, the Defendant acted with the intent to defraud; and

14 Fifth, the Defendant used or caused to be used the Postal Service or private
15 or commercial interstate carrier for sending or delivering any matter or thing, to carry out
16 or attempt to carry out an essential part of the scheme.

17 b. Wire Fraud: The elements of the offense of Wire Fraud as charged
18 in Count 6, in violation of Title 18, United States Code, Section 1343, are as follows:

19 First, the Defendant made up or knowingly participated in a scheme to
20 defraud or to obtain money or property from others by means of false pretenses,
21 representations or promises;

22 Second, the Defendant knew that the pretenses, representations, or promises
23 were false;

24 Third, the pretenses, representations or promises were material, that is, they
25 would reasonably influence a person to part with money or property;

26 Fourth, the Defendant acted with the intent to defraud; and

27 Fifth, the defendant transmitted, or caused to be transmitted, by means of
28 wire communication in interstate or foreign commerce, a writing, sign, signal, picture, or

1 sound, to carry out or attempt to carry out an essential part of the scheme.

2 c. Obtaining Information on Consumers under False Pretenses: The
3 elements of the offense of Obtaining Information on Consumers under False Pretenses as
4 charged in Count 12, in violation of Title 15, Section 1681q, are as follows:

5 First, the Defendant knowingly and willfully obtained information on a
6 consumer from a consumer reporting agency; and

7 Second, the Defendant did so under false pretenses.

8 3. The Penalties.

9 a. Mail Fraud: Defendant understands that the statutory penalties for the
10 offense of Mail Fraud, as charged in Count 1 are as follows: Imprisonment for up to five
11 (5) years, a fine of up to two hundred fifty thousand dollars (\$250,000.00), a period of
12 supervision following release from prison of up to three (3) years, and a one hundred
13 dollar (\$100.00) penalty assessment. Defendant agrees that the penalty assessment shall be
14 paid at or before the time of sentencing.

15 b. Wire Fraud: Defendant understands that the statutory penalties for the
16 offense of Wire Fraud, as charged in Count 6 are as follows: Imprisonment for up to five
17 (5) years, a fine of up to two hundred fifty thousand dollars (\$250,000.00), a period of
18 supervision following release from prison of up to three (3) years, and a one hundred
19 dollar (\$100.00) penalty assessment. Defendant agrees that the penalty assessment shall be
20 paid at or before the time of sentencing.

21 c. Obtaining Information on Consumers Under False Pretenses:
22 Defendant understands that the statutory penalties for the offense of Obtaining Information
23 on Consumers Under False Pretenses as charged in Count 12 are as follows:
24 Imprisonment for up to two (2) years, a fine of up to two hundred fifty thousand dollars
25 (\$250,000.00), a period of supervision following release from prison of up to one (1) year,
26 and a one hundred dollar (\$100.00) penalty assessment. Defendant agrees that the penalty
27 assessment shall be paid at or before the time of sentencing.
28

1 Defendant agrees that any monetary penalty the Court imposes, including the
2 special assessments, fines, costs or restitution, is due and payable immediately, and further
3 agrees to submit a completed Financial Statement of Debtor form as requested by the
4 United States Attorney's Office.

5 Defendant understands that supervised release is a period of time following
6 imprisonment during which he will be subject to certain restrictions and requirements.
7 Defendant further understands that if supervised release is imposed and he violates one or
8 more of its conditions, he could be returned to prison for all or part of the term of
9 supervised release that was originally imposed. This could result in Defendant serving a
10 total term of imprisonment greater than the statutory maximums stated above.

11 4. Rights Waived by Pleading Guilty. Defendant understands that, by pleading
12 guilty, he knowingly and voluntarily waives the following rights:

- 13 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 14 b. The right to a speedy and public trial before a jury of Defendant's
15 peers;
- 16 c. The right to the effective assistance of counsel at trial, including, if
17 Defendant could not afford an attorney, the right to have the Court appoint one for
18 Defendant;
- 19 d. The right to be presumed innocent until guilt has been established at
20 trial, beyond a reasonable doubt;
- 21 e. The right to confront and cross-examine witnesses against Defendant
22 at trial;
- 23 f. The right to compel or subpoena witnesses to appear on Defendant's
24 behalf at trial;
- 25 g. The right to testify or to remain silent at trial, which such silence
26 could not be used against Defendant; and
- 27 h. The right to appeal a finding of guilt or any pretrial rulings.
28

1 5. Applicability of Sentencing Guidelines. Defendant understands and
2 acknowledges the following:

3 a. The United States Sentencing Guidelines, promulgated by the
4 United States Sentencing Commission, are applicable to this case;

5 b. The Court will determine Defendant's applicable Sentencing
6 Guidelines range at the time of sentencing;

7 c. The Court may impose any sentence authorized by law, including a
8 sentence that, under some circumstances, departs from any applicable Sentencing
9 Guidelines range up to the maximum term authorized by law;

10 d. The Court is not bound by any recommendation regarding the sentence
11 to be imposed, or by any calculation or estimation of the Sentencing Guidelines range
12 offered by the parties, or by the United States Probation Department; and

13 e. Defendant may not withdraw a guilty plea solely because of the
14 sentence imposed by the Court.

15 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
16 guaranteed what sentence the Court will impose.

17 7. Restitution. Defendant shall make restitution in the amounts and to the
18 persons and entities as shall be determined at the time of sentencing.

19 8. Loss. The United States and Defendant agree that a reasonable estimate of
20 the loss for purposes of the Sentencing Guidelines based on available information is more
21 than two million five hundred thousand dollars (\$2,500,000.00) and less than five million
22 dollars (\$5,000,000.00).

23 9. Departures. The United States and Defendant agree that neither party will
24 ask the Court to depart from the sentencing range established by the applicable Sentencing
25 Guidelines as determined by the Court.

26 10. Statement of Facts. The parties agree on the following facts in support of
27 Defendant's guilty pleas and for purposes of calculating the base offense level of the
28 Sentencing Guidelines. Defendant admits he is guilty of the charged offenses.

1 The Defendant had a majority ownership interest in and operated a business
2 known as Touch Menus, Inc. Touch Menus, Inc.'s business involved the
3 development and sale of certain computer and related hardware and computer
4 software whose principal application was in the restaurant business. Among other
5 things, the products allowed restaurant servers to take and enter orders
6 electronically at table side. Touch Menus products were also used in the fast food
7 industry. The Defendant also operated as a sole proprietorship a business known as
8 CompuLease. CompuLease entered into leases with restaurants for lease of the
9 products developed and sold by Touch Menus, Inc.

10 Beginning in approximately 1988, the Defendant began a business
11 relationship with Farrel Price, who provided financing for the Defendant's
12 businesses. The financing took place through a mechanism known as sale/lease-
13 back financing.

14 In the typical transaction, Price or one of several entities related to Price
15 which shall be collectively referred to as "the Farrel Price Entities"¹, or one of the
16 friends or family of Farrel Price and their related entities who also did business with

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22 ¹The "Farrel Price Entities" included the following:

23 AFP Enterprises Limited Partnership
24 AFP Family Limited Partnership
25 AFP IRA #1
26 AFP IRA #2
27 AFP Keogh
28 Progressive Funding LLC
 Personal Success Systems, Inc.
 Price Carlson Funding LLC (50% with Richard Carlson)
 Price Funding LLC (50% with Bradley Price)

1 the Defendant and who shall be collectively referred to as the "Other Investors"²,
2 would purchase from the Defendant certain Touch Menus products, which Price, a
3 Farrel Price Entity or Other Investor would lease-back to the Defendant, thereby
4 creating a debt owed by the Defendant to Price, a Farrel Price Entity or Other
5 Investor. The Defendant through CompuLease would in turn lease the products to a
6 restaurant customer, and pledge the lease with the restaurant customer as collateral
7 for the debt owed by Defendant to Price, a Farrel Price Entity or Other Investor.
8 Although the sale/lease-back financing transactions were legitimate at the outset, the
9 Defendant later reverted to lies and deception in the course of his business dealings
10 with Price, the Farrel Price Entities and the Other Investors.

11 By approximately 1995, and continuing until on or about January 5, 2001,
12 the Defendant devised and carried out a scheme and artifice to obtain money from
13 Price, the Farrel Price Entities and the Other Investors based on false and fraudulent
14 pretenses, representations and promises. In order to induce Price, the Farrel Price
15 Entity or Other Investor to enter into a sale/lease-back arrangement and thereby
16 provide money to the Defendant or his businesses, the Defendant would present to
17 Price, the Farrel Price Entity or Other Investor a purported lease with a restaurant
18 customer, along with a credit report for that customer. Based on the representations
19 reflected by these documents, Price, the Farrel Price Entity or Other Investor would
20 provide the financing to the Defendant pursuant to the sale/lease-back arrangement
21

22 ²The "Other Investors" included the following:

23 Bradley Price (Farrel Price's son) and related entities:
24 Bradley and Laura Price IRAs
24 Northwest Quality Properties Inc.
24 Price Funding LLC (50% with Farrel Price)
25 Glenn Kalmus
25 Kalmus Funding LLC
26 LaNae Dance
26 Lincoln Financial Service LLC
27 Richard Carlson
27 Price Carlson Funding LLC (50% with Farrel Price)
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1 described above. However, the purported leases with the restaurant customer were
2 fabricated. The Defendant had chosen both the names of the restaurants and names
3 of individuals, sometimes randomly from the phone book; prepared lease
4 agreements with those names; forged the purported lessees' signatures; and attached
5 credit reports for the purported restaurant owners that he had obtained from
6 Equifax, a consumer reporting agency, under the false pretenses that he had
7 legitimate business transactions with the consumers. In fact, the purported
8 restaurant owners did not own the restaurants, and, the restaurants had no leases
9 with the Defendant or CompuLease. Having devised this scheme and artifice to
10 defraud, the Defendant obtained money from Price, the Farrel Price Entities and
11 Other Investors through such false and fraudulent pretenses, representations and
12 promises.

13 On or about April 18, 2000, for the purpose of executing the scheme and
14 artifice to defraud and attempting to do so, and for the purpose of obtaining money
15 by means of false and fraudulent material pretenses, representations and promises,
16 the Defendant knowingly caused to be sent from Henderson, Nevada, for delivery to
17 him at 13609 NE 26th Place, Bellevue, Washington, within the Western District of
18 Washington, by commercial interstate carrier, specifically Federal Express, a check
19 in the sum of sixty thousand dollars (\$60,000.00) in connection with a transaction
20 with one of the Other Investors, specifically Lincoln Financial Services LLC, in
21 which he had fabricated and forged one or more leases.

22 On or about September 12, 1998, for the purpose of executing the scheme
23 and artifice to defraud and attempting to do so, and for the purpose of obtaining
24 money by means of false and fraudulent material pretenses, representations and
25 promises, the Defendant knowingly caused transmission of writings, signs, signals,
26 pictures and/or sounds by wire communication in interstate commerce, specifically
27 by using a computer system in the Western District of Washington to access
28 electronic data in a computer system in the state of Georgia, and obtain from it a

1 credit report on an individual whose initials are H.Y., which individual he had
2 falsely and fraudulently represented to one of the Farrel Price Entities, specifically
3 A. Farrel Price Family Limited Partnership, as a legitimate party to a lease for
4 restaurant equipment.

5 On or about September 12, 1998, the Defendant knowingly and willfully
6 obtained and caused to be obtained a credit report on a consumer whose initials are
7 H.Y. from a consumer reporting agency under false pretenses, that is the Defendant
8 obtained the credit report when he had no legitimate business transactions with the
9 consumer but instead obtained the credit report as part of his scheme to defraud A.
10 Farrel Price Family Limited Partnership.

11 11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement, the
12 United States Attorney's Office for the Western District of Washington agrees to move to
13 dismiss the remaining counts in the Indictment at the time of sentencing and not to
14 prosecute Defendant for any additional offenses known to it as of the time of this
15 Agreement that are based upon evidence in its possession at this time, or that arise out of
16 the conduct giving rise to this investigation. In this regard, Defendant recognizes that the
17 United States has agreed not to prosecute all of the criminal charges that the evidence
18 establishes were committed by Defendant solely because of the promises made by
19 Defendant in this Agreement. Defendant acknowledges and agrees, however, that for
20 purposes of preparing the Presentence Report, the United States Attorney's Office will
21 provide the United States Probation Office with evidence of all relevant conduct committed
22 by Defendant.

23 Defendant agrees and acknowledges that any charges to be dismissed before
24 or at the time of sentencing were substantially justified in light of the evidence available to
25 the United States, were not vexatious, frivolous or taken in bad faith, and do not provide
26 Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No.
27 105-119 (1997).
28

1 12. Acceptance of Responsibility. The United States acknowledges that if
2 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG §
3 3E1.1(a) and if the offense level is sixteen (16) or greater, Defendant's total offense level
4 should be decreased by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because
5 Defendant has assisted the United States by timely notifying the authorities of his intention
6 to plead guilty, thereby permitting the United States to avoid preparing for trial and
7 permitting the Court to allocate its resources efficiently.

8 13. Voluntariness of Plea. Defendant acknowledges that he has entered into this
9 Plea Agreement freely and voluntarily, and that no threats or promises, other than the
10 promises contained in this Plea Agreement, were made to induce Defendant to enter this
11 plea of guilty.

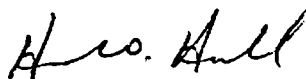
12 14. Statute of Limitations. In the event that this Agreement is not accepted by
13 the Court for any reason, or Defendant has breached any of the terms of this Plea
14 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
15 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
16 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
17 Agreement by Defendant is discovered by the United States Attorney's Office.


18 15. Post-Plea Conduct. Defendant understands that the terms of this Plea
19 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
20 If, after the date of this Agreement, Defendant should engage in conduct that would
21 warrant an increase in Defendant's adjusted offense level or justify an upward departure
22 under the Sentencing Guidelines (examples of which include, but are not limited to:
23 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
24 pending sentencing, and false statements to law enforcement agents, the probation officer
25 or Court), the United States is free under this Agreement to seek a sentencing enhancement
26 or upward departure based on that conduct.

27 16. Completeness of Agreement. The United States and Defendant acknowledge
28 that these terms constitute the entire Plea Agreement between the parties. This Agreement

1 only binds the United States Attorney's Office for the Western District of Washington. It
2 does not bind any other United States Attorney's Office or any other office or agency of
3 the United States, or any state or local prosecutor.

4 Dated this 13 day of August, 2003.

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8 HOWARD O. HOWELL
Defendant

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11 BRIAN TSUCHIDA
Attorney for Defendant

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13 
14 SUSAN LOITZ
Assistant United States Attorney